

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2002-000130

04/04/2008

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT
S. Brown
Deputy

BASHAS INC

JIM L WRIGHT

v.

MARICOPA COUNTY

JERRY A FRIES

UNDER ADVISEMENT RULING

(Plaintiff's Motion For Summary Judgment and Defendant's Motion For Summary Judgment)

Bashas' stores contain walk-in coolers. Those were reported by Bashas' as personal property; they were also included in the taxable value of the real property due to use of the cost method of assessment.

The difficulty both here and in *Safeway v. Maricopa County*, TX2002-000132, is that there is no unambiguous evidence as to whether the coolers, which were assessed as personal property, were also included in the assessed value of the real property. In both cases, the Board of Equalization made adjustments, but did not explain the rationale for them, so there is no basis for the Court in either case to conclude that the Board made an adjustment to exclude the coolers. Based on the factual findings of Judge Armstrong, *Safeway* is less problematic: as its stores were initially assessed by the flawed cost method that included the value of the coolers, *and there was no evidence that any other method was ever used to assess them*, the Court could conclude that the Board's final valuation must have been based on the cost method and therefore included the coolers. Here, in an attempt to correct the double taxation, the cost method was replaced by the income driven method prior to submission to the Board. The Court of Appeals could not resolve whether this method too included the value of the coolers, and therefore held that an issue of material fact remained as to whether the coolers were taxed twice. *Bashas' v. Maricopa County*,

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CA-TX 04-0019 ¶ 34 (App. 2005) (memorandum decision). (Note that references to this decision are to the corrected version filed July 21, 2006.) It made clear, however, that Bashas' "will need to establish such facts on remand with an individualized analysis of each parcel." *Id.* at ¶ 35.

The record now before the Court is no more conclusive, if substantially more voluminous, than that before the Court of Appeals three years ago. The essential issue remains: given that the income driven method was presented to the Board of Equalization which presumably relied on it, did that method factor out the value of the coolers as the cost method failed to do? Mr. Mumphrey, on whose reverse analysis the Court of Appeals placed such hope, has reported that he cannot resolve the question. Nor have any of the recently deposed witnesses offered a definitive opinion. In the present state of the record, neither Bashas' nor the County has established beyond a genuine issue of material fact either that the Board's valuation did or did not exclude the coolers. There is nothing to overcome the ruling of the Court of Appeals that summary judgment cannot be granted to either party. *Id.* at ¶ 36; *see also* Order of the Court of Appeals dated July 21, 2006 at 1. The dispute must be resolved the trier of fact.

Turning to the issue of whether the error correction statute may be applied to Bashas' reporting of the coolers as personal property, it appears to the Court that the coolers in fact *are* personal property. *See id.* at ¶ 3. It was the County's error in simultaneously assessing them as real property that resulted in the double taxation. Mr. Gibbs's advice not to report them as personal property in counties where they are taxed as real property may have the advantage of practicality, as the correct total is reached without litigation, but besides the loss of uniformity in statewide assessment that would result from embracing it, offsetting an error with another, has not been shown to be a principle of tax law. As Bashas' correctly reported the coolers as personal property, the error correction statute is inapplicable.

Therefore, IT IS ORDERED both Plaintiff's Motion For Summary Judgment and Defendant's Motion For Summary Judgment are denied.